

Exhibit J

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6775VILH hearing
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

05 Cr. 621 (KMK)

ALBERTO VILAR and GARY TANAKA,
Defendants.

-----x

July 7, 2006
10:30 a.m.

Before:

HON. KENNETH M. KARAS,

District Judge

APPEARANCES

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
BY: MARC LITT
DEIRDRE MCEVOY
Assistant United States Attorneys

HOFFMAN & POLLOK, L.L.P.
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BY: JEFFREY C. HOFFMAN
SUSAN C. WOLFE

WILSON, SONSINI, GOODRICH & ROSATI
Attorneys for Defendant Tanaka
BY: GLENN CHARLES COLTON
JESSICA MARGOLIS
and

KOBRE & KIM, L.L.P.
BY: STEVEN GARY KOBRE
JUSTIN SHER

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(Case called)

MR. LITT: Marc Litt and Deirdre McEvoy for the United
States. With us at counsel table are U.S. Postal Inspector
Cynthia Fraterriago and Jeff Jarrett.

THE COURT: Good morning.

MR. HOFFMAN: Good morning, your Honor. Jeffrey
Hoffman and Susan Wolfe. And with us is Joanna Eftychiou, who
is awaiting addition to the bar who is the only member of the

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9 MS. MCEVOY: The government will abide by that.
10 THE COURT: So, we will start off with the Inspector
11 and then why don't we just take it from there?
12 who is the other person, Mr. Hoffman? You were
13 referring to another law enforcement person?
14 MS. MCEVOY: Inspector Golden.
15 THE COURT: Okay.
16 Do you all care if Inspector Golden goes next or
17 Mr. Litt, just so there is no surprise?
18 MR. COLTON: We are ready for Inspector Golden, too.
19 Of course we want him excluded from the courtroom until his
20 turn.
21 THE COURT: That's a given.
22 So, Fraterrigo and Golden. And who else is left,
23 other than Mr. Litt?
24 MS. MCEVOY: Former Postal Inspector Thomas Feeney,
25 Inspector Williamson, and I think that's all from the
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1 government.

2 THE COURT: All right.
3 We have the whole day. I assume if we go through the
4 first two Inspectors are we going to -- are the other
5 inspectors available today? Are they available on Monday?
6 MS. MCEVOY: Monday.
7 THE COURT: So then Mr. Litt may go today,
8 Mr. Hoffman.
9 MR. HOFFMAN: I understand.
10 THE COURT: During the lunch break maybe you can go
11 through your notes.
12 MR. HOFFMAN: Thank you.
13 THE COURT: Why don't we take a five-minute break.
14 MS. MCEVOY: Your Honor, if I may before the break,
15 hand you up the additional e-mails?
16 THE COURT: Please. Thank you.
17 (Recess)
18 THE COURT: All right, the long awaited moment.
19 Inspector Fraterrigo, right?
20 MS. MCEVOY: Yes.
21 CYNTHIA FRATERRIGO,
22 called as a witness by the Government,
23 having been duly sworn, testified as follows:
24 THE WITNESS: Cynthia Fraterrigo.
25 THE COURT: You may proceed. Go ahead.
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1 MS. MCEVOY: Thank you, your Honor.
2 DIRECT EXAMINATION
3 BY MS. MCEVOY::
4 Q. Are you employed?
5 A. I'm employed with the United States Postal Inspection
6 Service as a postal inspector.
7 Q. How long have you been a U.S. postal inspector?
8 A. Approximately seven years.
9 Q. What is your current assignment?
10 A. I'm assigned to the Church Street fraud team in the New
11 York division.
12 Q. What are your responsibilities with that team?
13 A. I am a -- I investigate complex white collar crime cases,
14 corporate fraud cases, securities fraud cases, mail securities
15 fraud cases.

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16 Q. Inspector, if you could keep your voice up a little. It is
17 a little hard to hear.

18 A. Of course.

19 Q. Thank you.

20 Prior to being on that team, what did you do?

21 A. I was a special agent with the United States Secret
22 Service.

23 Q. And before, between when you were on the Church Street
24 fraud team and the Secret Service, were you on any other teams
25 with the Postal Inspection Service?

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1 A. Yes, I was. I was on the external fraud team.

2 Q. As part of that team, what were your primary
3 responsibilities?

4 A. We conducted cases involving mail theft, identity theft,
5 credit card fraud, mail fraud and bank fraud.

6 Q. And you said that prior to being a postal inspector you
7 were a special agent with the United States Secret Service?

8 A. Yes, I was.

9 Q. How long were you a Secret Service agent?

10 A. Approximately four and a half years.

11 Q. What were your duties as a Secret Service agent?

12 A. I was assigned to electronic crimes team, I conducted
13 investigations involving cyber crimes, and also I did
14 protection of the President of the United States, Vice
15 President and foreign dignitaries visiting New York.

16 Q. Approximately how many searches have you participated in
17 during the course of your law enforcement career?

18 A. Approximately 40 to 50 cases, searches.

19 Q. Did you say 40 to 50?

20 A. Searches.

21 Q. And, since joining the U.S. Postal Inspection Service
22 approximately how many searches have you participated in?

23 A. In 10.

24 Q. Are you familiar with an investigation in the case
25 involving Alberto Vilar and Gary Tanaka?

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1 A. Yes, ma'am.

2 Q. What has been your role in that investigation?

3 A. I am the lead case agent.

4 Q. What are your duties and responsibilities as lead case
5 agent?

6 A. I follow up on the investigative leads. I conduct
7 interviews. Serve subpoenas. Review documents.

8 Q. And, in connection with that investigation, did there come
9 a time when you swore out a complaint and obtained an arrest
10 warrant for Alberto Vilar?

11 A. Yes, I did.

12 Q. When did that occur?

13 A. On May 25, 2005.

14 Q. What charges against Alberto Vilar were contained in the
15 complaint?

16 A. Alberto Vilar was charged with mail fraud, wire fraud and
17 investment advisor fraud.

18 Q. Did there also come a time when you swore out a complaint
19 and obtained an arrest warrant for Gary Tanaka?

20 A. Yes.

21 Q. When did that occur?

22 A. May 25th, 2005.

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9 used in that investment was wired to a -- wired from -- wired
10 to a brokerage account at Bear Stearns. That money was held in
11 that brokerage account and then shortly after it was wired out
12 to the Amerindo operating account -- portions of it was wired
13 out to the operating account. The rest was divided up into
14 other wires to Alberto Vilar's personal checking account and
15 also to another wire going overseas. And the wire that went to
16 Alberto Vilar's personal checking account was, later he --
17 Alberto Vilar had sent out checks to pay for personal expenses
18 and make charitable donations.

19 Q. And this is information you provided postal inspectors
20 during the briefing?

21 A. Yes.

22 Q. What, if anything, did you explain to the postal inspectors
23 during the briefing about an entity or product calls Rhodes
24 Capital?

25 A. I also informed the inspectors that this particular
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1 investor provided -- also invested in an entity calls Rhodes
2 Capital and that she was not -- this investor was not able to
3 redeem her investments.

4 Q. And, did you provide the postal inspectors during the
5 briefing, with the name of that investor?

6 A. Yes, I did. Her name is Lily Cates.

7 Q. What, if anything, did you tell the inspectors during the
8 brief about guaranteed fixed rate deposits?

9 A. I told the inspectors that there was another investor who
10 was a very long-time friend and good friend of Alberto Vilar,
11 invested approximately \$11 million in guaranteed fixed rate
12 deposits, her name was Lisa Mayer. And her family is Herbert
13 Mayer and Deborah Mayer, the Mayer family.

14 Q. What, if any things, did you explain to the postal
15 inspectors during the briefing about specific account
16 information that was covered by the search warrant?

17 A. I explained to the postal inspectors that the two
18 individuals, Gary Tanaka and Alberto Vilar, used the Bear
19 Stearns brokerage accounts and used the Chase Manhattan Bank,
20 JP Morgan Chase bank accounts to wire money back and forth.

21 Q. What, if anything, did you tell the postal inspectors about
22 an account in the name of PTC?

23 A. I explained to the inspectors that the money was -- some
24 portions of money that was in the brokerage account was wired
25 to an offshore account to an account called PTC, Private Trust

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1 Company, in the Bahamas.

2 MR. HOFFMAN: Your Honor, I'm going to object at this
3 point. I have no objection to a question what did you say, but
4 as opposed to telling her -- as opposed to leading her into
5 each thing saying what did you say about that. I would like
6 her memory as to what did you say.

7 THE COURT: Overruled.

8 Go ahead.

9 BY MS. MCEVOY::

10 Q. What, if anything, did you explain to the postal inspectors
11 about the charges against Gary Tanaka?

12 A. I explained that Gary Tanaka was charged with wire fraud
13 and that investors' money that was held in the Bear Stearns
14 brokerage account was being wired out to purchase horses.

15 There were several horses that were in the complaint

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16 and that if, you know, while they're conducting the search if
17 they came across any material involving any wire transfers, to
18 look for any purchase agreements or any documentation
19 surrounding the wire transfers.

20 Q. What, if anything, did you distribute to the postal
21 inspectors during the briefing?

22 A. I distributed the search warrants to the inspectors and the
23 search warrant affidavits to the inspectors that were
24 conducting the search.

25 And I distributed the arrest warrants and the
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1 complaints to the inspectors that were participating in the
2 arrests.

3 Q. At what point were the complaints and search warrants and
4 affidavits distributed during the briefing?

5 A. Toward the end of the briefing.

6 Q. What, if anything, did you see the postal inspectors do
7 with the documents you handed out?

8 A. I recall them reading, going through it, and asking
9 questions.

10 Q. And, with respect to you recall them reading, how did you
11 know they were reading?

12 A. I observed them going through the documents, reviewing the
13 warrants in the affidavits.

14 Q. Did you distribute the complaints to all the postal
15 inspectors?

16 A. No, I did not.

17 Q. Why not?

18 A. It was based on my past experience with search warrants
19 the -- I failed to give it -- it was an oversight that I should
20 have given the complaints to all the inspectors. At the time I
21 didn't realize that the -- I didn't remember that the
22 complaint -- that the search warrant referred to the complaint
23 as an attachment.

24 I have always been accustomed to having a search
25 warrant that incorporates the language of the complaint in the
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1 actual search warrant affidavit and in this instance I
2 separated the two and did not think it -- did not recall it was
3 referred to in this search warrant affidavit.

4 Q. What, if any instructions, did you give to the inspectors
5 when you handed out the search warrants and affidavits?

6 A. I explained to them to read it over and that if they had
7 any questions, that I would be at the search site later in the
8 morning or early afternoon and, if they had any questions, they
9 can ask myself or Inspector John Feiter.

10 I also explained to them while they were conducting
11 the search to pay attention to the inventory sheets. In our
12 inventory sheets it lists the items that are seized and not to
13 generalize the item that they were seizing as a business record
14 or corporate record and to specifically indicate what it is:
15 The name of the file, the name of the item or a better. A
16 detailed description of the item on the inventory sheet.

17 Q. You mentioned that there were questions from postal
18 inspectors at the briefing or after the briefing?

19 A. Yes, there were.

20 Q. Do you recall the nature of the questions that the postal
21 inspectors asked you after the briefing?

22 A. I recall there were several questions but I don't recall

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23 all of them what were said.
24 The few that I do remember was there was a question
25 about Gary Tanaka and the horses. The inspector asked me what
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1 in particular would -- what particular documents should we --
2 should they focus on while they were conducting a search on
3 that -- on his horses. And I explained to them that the charge
4 in the complaint was that Gary Tanaka was charged with wire
5 fraud and he was purchasing horses from brokerage accounts and
6 that money belonged to investors and if they found any
7 documentation surrounding that wire transfer to purchase a
8 horse and any purchase agreements or ownership papers, that
9 they should focus on that and that should be seized.
10 Q. Do you recall the nature of any of the other questions that
11 postal inspectors asked after the briefing?
12 A. I recall there was another question about Alberto Vilar and
13 his charitable donations.

14 I made mention that Alberto Vilar was donating to
15 several opera houses around the world and that in this -- in
16 the complaint he was charged with -- charged with making a
17 charitable donation with investors' money.

18 Q. After the briefing, what did you do?
19 A. After the briefing, I left with Postal Inspector Kurt
20 Roinestad to the Lombardi Hotel to arrest Gary Tanaka.

21 Q. Did there come a time that day when you arrived at
22 Amerindo's offices at 399 Park Avenue?

23 A. Yes.

24 Q. Approximately when did you arrive at 399 Park Avenue?

25 A. That was approximately around lunchtime, around noon.

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1 Q. who was at the location when you arrived?
2 A. I recall seeing John Feiter, my supervisor; postal
3 inspectors from my team; postal inspectors from another fraud
4 team; Amerindo employees; and I later learned Amerindo's
5 attorney, Eugene Licker.
6 Q. Was that at the location?
7 A. That was at the location, yes.
8 Q. After you arrived at the location who, if anyone, did you
9 speak with?
10 A. I spoke with my team leader and he informed me that Eugene
11 Licker, the attorney for Amerindo, was present.
12 He also informed me that other inspectors from another
13 fraud team came to assist in the search and that they did not
14 search Alberto Vilar's office and that they left it for me to
15 search it.

16 Q. And when you say "they" who is they?

17 A. The postal inspectors. John also.

18 Q. After speaking to your team leader, what did you do next?

19 A. After I spoke with him I walked around the office, you
20 know, observed postal inspectors searching in desks, cabinets,
21 inventorying items, going through documents and binders.

22 I walked around the back of the office. I observed
23 the computer, forensic inspectors conducting images of the
24 computers, and I observed the Amerindo employees sitting at the
25 receptionist area.

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1 Q. what, if anything, did you observe postal inspectors

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9 but I felt that they were not useful to the investigation.
10 Q. Would it be accurate to say that when you made an
11 application to seize documents it was your understanding that
12 you were -- one of the things you were swearing to was to seize
13 documents that were evidence of criminality, correct?
14 A. Yes.
15 Q. When this attachment A says investment brochures, it
16 doesn't describe any particular kind of investment brochure,
17 correct?
18 A. No, it does not.
19 Q. It is just a broad statement of investment brochures which
20 can cover lots of kinds of documents, right?
21 A. That's correct.
22 Q. So, this statement that there is probable cause to seize
23 all kinds of investment brochures and that would mean probable
24 cause that these things would show criminality, or be evidence
25 of criminality was incorrect, right?

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6775VILH Fraterrigo - cross

1 A. I'm sorry. Can you repeat that?
2 Q. When you swore that there was probable cause to seize any
3 and all investment brochures not limited here, just investment
4 brochures on the premises and that they would be evidence of
5 criminality, that's incorrect, as you stated earlier, correct?
6 A. Well, as I -- the reason why I didn't hear you the first
7 time is because I was reading it. There is a sort of limiting
8 factor here because it is sent to or received from clients.
9 The investment brochures that I reviewed at Amerindo
10 when I made a determination to leave was not investment
11 brochures that were sent to or received from clients. These
12 were investment brochures that were sent to Amerindo to invest.
13 These were companies that wanted Amerindo to invest in them or
14 giving them a company profile.
15 Q. Where are you reading from when you say sent to or received
16 from clients?
17 A. Here, paragraph 4, it says: Currently informed client
18 list, client files, investment brochures, marketing materials,
19 investment advisory agreements, copies of correspondence sent
20 to, from, including --

THE COURT: when you read, read slow.

22 A. -- including redemption requests received from clients.
23 Q. Got it.

24 Now, let me ask you this. You understood that
25 Amerindo had been in business for at least over 20 years,

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1 right?
2 A. Yes.
3 Q. You understood that Amerindo had numerous institutional
4 clients, correct?
5 A. That's correct.
6 Q. And so, are you saying that you had probable cause when you
7 swore that you did, to seize investment brochures that had been
8 sent to or received from 20 years' worth of institutional
9 clients?
10 A. Yes.
11 Q. Tell me that probable cause. Tell me what it was.
12 A. There are two investors that were, had a relationship with
13 Alberto Vilar and Amerindo for approximately 20 years --
14 Q. And, other than those two investors --

THE COURT: Please don't interrupt the witness.

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16 MR. HOFFMAN: Sorry. Withdrawn.
17 THE WITNESS: They had a 20 year relationship and, you
18 know, I had probable cause to believe that there could be other
19 investors.
20 BY MR. HOFFMAN::
21 Q. Tell me what probable cause you had to believe that
22 investment brochures sent to or from the Los Angeles Fire and
23 Police Department were evidence of criminality?
24 A. I -- my understanding at the time was that I had probable
25 cause and I still believe to this day I had probable cause to
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1 seize any investment brochures from 20 years ago.
2 Q. I'm asking you from the Los Angeles Fire and Police
3 Department.
4 A. That's from the mutual fund. They're from the U.S. Mutual
5 Fund, if I understand you.
6 Q. Right, and U.S. Mutual Funds' offices were at Park Avenue,
7 correct?
8 A. That's correct.
9 Q. And so, what probable cause was there to take investment
10 brochures that were seized to and/or from -- sent to or
11 received from the Los Angeles Fire and Police Department?
12 A. It was a -- probable cause that I had was these two
13 investment advisors were, failed to redeem two investors, and
14 my understanding was that there was other -- I had other
15 information to believe that I had reason and probable cause at
16 the time to seize any items from that fund.
17 Q. How about from the Bayer Corporation?
18 A. I'm sorry?
19 Q. The Bayer Corporation, another client of the fund, did you
20 have probable cause to believe that you could seize investment
21 brochures that were sent to and from the Bayer Corporation to
22 Amerindo Investment Advisors, the registered investment
23 advisory company?
24 THE COURT: B-A-Y-E-R?
25 MR. HOFFMAN: Correct.
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6775VILH Fraterriago - cross
1 THE COURT: The aspirin?
2 MR. HOFFMAN: Yes, sir.
3 A. I don't think I had probable cause to seize anything out of
4 that.
5 Q. How about Johnson and Johnson.
6 A. No.
7 Q. City of Seattle Employees' Retirement?
8 A. No.
9 Q. City of Stanford Employees' Retirement?
10 A. No.
11 Q. Whirlpool Corporation?
12 A. No.
13 Q. And if I went down a list of a hundred or so other, other
14 than the two individuals you have mentioned but institutional
15 entities like this that were, whose records were housed at the
16 Park Avenue office and who were clients of Amerindo Investment
17 Advisors, Inc., the registered investment advisory company,
18 would it be accurate to say you had no probable cause to seize
19 their -- I will use the specific words -- investment brochure
20 sent to or gotten from them, correct?
21 MS. MCEVOY: Your Honor, the government would just
22 object to Mr. Hoffman's testimony on that issue.

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23 THE COURT: Overruled.

24 THE WITNESS: No.

25 BY MR. HOFFMAN::

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1 Q. No, meaning that's correct?

2 A. That's correct.

3 Q. You also asked in paragraph 4 of attachment A for marketing materials. What did you mean by that?

4 A. Marketing materials?

5 Q. Yes.

6 A. Any marketing materials from Amerindo, any marketing materials regarding any of their investments or funds.

7 Q. So, when you say marketing materials, you mean any materials that are sent out to clients or potential clients that describe what they do, what Amerindo does?

8 A. That's what I believed it was, yes.

9 Q. And, Amerindo Investment Advisors, Inc., the reason I keep repeating is of course because you have lumped all the Amerindo into one so I am sticking with one now, Amerindo Investment Advisors, Inc., the licensed U.S. investment advisory company; you've stated a moment ago that you were aware that they had a lot of institutional clients, correct?

10 A. Yes.

11 Q. And, would it be accurate to say that you had no probable cause to seize marketing material from that entity that would have been sent to all of these institutional clients over 20 years, correct?

12 A. That's correct.

13 If it's not in the warrant, it wasn't seized. It

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1 wasn't covered. It wasn't covered.

2 Q. Well, the warrant says marketing materials. It doesn't say -- it doesn't limit it as to who they were sent to. It says marketing materials sent to or received from clients.

3 A. That's correct.

4 Q. And my question to you is, of the dozens if not hundreds of institutional clients that this would cover for Amerindo Investment Advisors, Inc. U.S., licensed investment advisory company, you had zero probable cause to seize marketing materials sent to or from those clients, correct?

5 A. That's correct.

6 Q. It also says investment advisory agreements from clients, or to or from clients; and the same would be true that you would have no probable cause -- zero -- to seize investment advisory agreements between the licensed investment advisor Amerindo U.S. and Amerindo Investment Advisors U.S. and all the institutional clients it has had over a 20 year period, correct?

7 A. That's correct.

8 Q. And, you have asked for all correspondence, copies of correspondence sent to or received from clients, and the same would be true that you have no probable cause to seize copies of correspondence between the licensed Amerindo Investment Advisors, Inc., U.S., the licensed investment advisory company and, let's say, the 20 years' worth of institutional clients

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1 that it had, correct?

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2 A. That's correct.
 3 Q. Did you ever tell the people who you briefed on what they
 4 were allowed to seize that they were not allowed to seize any
 5 of the various documents I just went over with you as it
 6 related to clients of institutional clients of Amerindo
 7 Investment Advisors, Inc., the American licensed company?
 8 A. No, I did not.
 9 Q. Would it be accurate to say that any of the other
 10 paragraphs in attachment A that refer to generic-type documents
 11 as I just read to you, broadly described documents that were
 12 between Amerindo Investment Advisors, Inc., the licensed
 13 American registered investment advisory company, and its 20
 14 years' worth of institutional clients, you had no probable
 15 cause for the seizure of those documents?

16 MS. MCEVOY: Your Honor, objection. Just ambiguous
 17 question.

18 MR. HOFFMAN: I can go through it.

19 THE COURT: Go ahead, Mr. Hoffman.

20 MR. HOFFMAN: Okay.

21 Q. Sticking with paragraph 4 you also asked for other
 22 documents -- if you look at paragraph 4, after you asked for
 23 the documents we just discussed concerning those that were sent
 24 to or received from client, you then go on and say: And other
 25 documents concerning or reflecting the identities of and

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1 communications with clients who have investments in the
 2 Amerindo brokerage account.

3 Do you see that?

4 A. Yes.

5 Q. Would it be accurate to say that there was no probable
 6 cause to seize documents of any of the institutional clients of
 7 the licensed investment advisor Amerindo Investment Advisors,
 8 Inc., U.S., that had investments in Amerindo brokerage
 9 accounts, is that correct?

10 A. Yes, that's correct.

11 Q. And it would be equally correct to say that you never told
 12 that to any of the agents who executed the search warrant that
 13 those documents, there was no probable cause for and they
 14 shouldn't take them, correct?

15 A. That's correct.

16 Q. Would it be equally correct that nowhere in your
 17 submission, in your sworn affidavit, do you state that there
 18 are 20 years' worth, give or take, of institutional clients of
 19 Amerindo Investment Advisors, the licensed U.S. company, whose
 20 documents should not be taken?

21 A. I didn't put that in my affidavit.

22 Q. And, in fact, nowhere in your affidavit do you even say
 23 that there are such clients?

24 MS. MCEVOY: Your Honor, objection for -- based on
 25 your earlier rulings of what is not in the affidavit.

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1 THE COURT: Overruled, because that has to do with
 2 something different. You are talking about a relationship
 3 between what has been sought or not sought and that's what we
 4 are going through --

5 MR. HOFFMAN: Correct.

6 THE COURT: -- and why? Overruled. Go ahead.

7 THE WITNESS: Can you repeat it? I'm sorry.

8 BY MR. HOFFMAN::

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9 Q. And, in fact, you never even state in your affidavit and
10 the attachment thereto that there are such institutional
11 clients as Amerindo U.S., the licensed Amerindo investment
12 advisory company that they exist, these institutional clients?
13 You never state that in the affidavit, is that
14 correct?

15 A. That's correct.

16 Q. Looking at paragraph 5 you ask for client lists, client
17 files, investment brochures, marketing materials, investment
18 advisory agreements, copies of correspondence sent to or
19 received from clients and other documents concerning or
20 reflecting the identities of an communications with clients who
21 have investments managed by Amerindo who receive redemptions
22 through or make investments through overseas bank accounts and
23 trust companies including PTC Management, Limited, and
24 Barclays.

25 Do you see that?

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Fraterrigo - cross

1 A. Yes.

2 Q. Did you have any probable cause to ask for client lists
3 that would include, for example, any of the institutional
4 clients of Amerindo U.S., the licensed investment advisors
5 company, whose monies were so invested?

6 A. No.

7 Q. And that would be the same under that paragraph, you would
8 have no probable cause to those clients to their client files,
9 investment brochures, marketing materials, etc., correct?

10 A. That's correct.

11 Q. Now, in paragraph 6 you ask for documents reflecting all
12 investments in which Brian Harvey was involved, correct?

13 A. That's correct.

14 Q. And, again, you swear and state that you have probable
15 cause to seize all documents reflecting Brian Harvey's
16 investments, correct?

17 A. That's correct.

18 Q. And, what was the probable cause that you had, that you
19 swore you had concerning Brian Harvey?

20 A. I had information to believe that this individual did
21 not -- attempted to redeem an investment, had trouble with his
22 investment.

23 Q. Was that information you got from Brian Harvey?

24 A. No, it was not.

25 Q. Was that a document?

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6775VILH

Fraterrigo - cross

1 MS. MCEVOY: Objection.

2 THE COURT: Sustained.

3 Mr. Hoffman, if it is in the affidavit it is in the
4 affidavit, fine, if she wants to point to something in the
5 affidavit. What's behind it, we're not going there.

6 MR. HOFFMAN: Thank you.

7 Q. Show me what in this affidavit supports probable cause that
8 you swore you had that Brian Harvey documents reflecting
9 investments should be seized; what probable cause you had --
10 I'm sorry -- what probable cause there was in these documents
11 that show that there was evidence of criminality concerning
12 Brian Harvey, on the premises at Park Avenue?

13 A. Paragraph E of the affidavit.

14 THE COURT: Which paragraph? I'm sorry.

15 THE WITNESS: E.

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16 THE COURT: E.
17 MR. HOFFMAN: Can I have one moment?
18 THE COURT: Sure.
19 BY MR. HOFFMAN::
20 Q. Are you talking about page 9?
21 A. I'm sorry. Page 5 of the affidavit, paragraph E.
22 Q. Okay, there are two paragraph Es. They're on different
23 numbers. There is one on page 9. But, on paragraph E you are
24 talking about page 5 where you state: Cates told me about
25 other individuals who she believed to be investors with
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6775VILH Fraterriago - cross
1 Amerindo. Let's stop there.
2 That is correct?
3 A. That's correct.
4 Q. So, that statement is that you were told by Cates that she
5 believed as opposed to knew, is that what you are saying?
6 MS. MCEVOY: Objection.
7 THE COURT: It speaks for itself.
8 MR. HOFFMAN: Okay.
9 Q. When you wrote down that you were told that she believed
10 was it your understanding, since it is your words, that that
11 meant she wasn't sure?
12 MS. MCEVOY: Objection.
13 A. She believed.
14 THE COURT: Sustained. Sustained. It speaks for
15 itself.
16 BY MR. HOFFMAN:
17 Q. She believed to be invested with Amerindo, some of whom may
18 have had trouble redeeming all or part of their investment
19 including Brian Harvey.
20 A. That's correct.
21 Q. So, what you swore was your probable cause was a statement
22 that Brian Harvey may have been or was believed to potentially
23 have been an investor and may have had trouble redeeming all of
24 his shares.
25 Is that what are you telling us was your sworn
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6775VILH Fraterriago - cross
1 statement that that was probable cause?
2 A. It's in my affidavit was probable cause, yes.
3 Q. And there is nothing else in any of these submitted papers
4 for this warrant concerning Brian Harvey, correct?
5 A. That's correct.
6 MR. HOFFMAN: If I can have another second, your
7 Honor?
8 THE COURT: Sure.
9 (Pause)
10 Q. Going back to Exhibit A, paragraph 6 --
11 THE COURT: Attachment A.
12 Q. -- sorry -- where you say documents reflecting all
13 investments naming certain people including Brian Harvey; you
14 then say Joy Urich.
15 Do you see that?
16 A. Yes.
17 Q. So, you are aware that you have probable cause to seize
18 documents reflecting investments of Joy Urich. Is that right?
19
20 A. Yes.
21 Q. And your understanding, again, was that you have probable
22 cause to believe that there are documents that are at the Park